

State BID AND PERFORMANCE BONDSTypes of Acceptable Funding Available for Bid and Performance Bonds

1. Cash
2. Personal check
3. Certified check/cashier check/bank money order
4. Irrevocable letter of credit
5. Assurance bond
6. Certificate of deposit
7. Assignment of savings account

Bid Bonds

On advertised sales, a minimum of 10 percent of the bid value must accompany the bid. This should be in such a form as to assure payment as listed under "Types of Acceptable Funding Available for Bid and Performance Bonds."

All bid bonds in the form of cash or personal check shall be deposited and remitted per normal timber sale remittance procedures (see page 81-1). Reasons for depositing these funds are found in s. 20.906(1), Wis. Stats., and Manual Code 9341.1.

A personal check bid bond does not constitute a proper bid bond until the check has been cashed. If the check is returned for NSF (non-sufficient funds), it is not an appropriate bid bond and shall not be accepted.

In the event that the selected bidder refuses to sign the contract, any type of bid bond will be forfeited.

Disposition of Bid Bonds

Bid bonds that have been remitted may be handled in one of three ways, after the contractor has signed the timber sale contract:

1. Transferred directly to a performance bond.

This may be done with all forms of cash bid bonds, with the permission and by the request of the bidder, by submitting a request to transfer the funds on a Timber Sale Close-out Transaction, Form 2460-4 (see samples, page 87-1).

2. Transfer bid bonds as advance stumpage.

Once the contractor has supplied another form of performance bond (letter of credit, etc.), any remitted bid bonds may be transferred as advance stumpage, with the permission and by the request of the bidder, using a Timber Sale Close-out Transaction, Form 2460-4 (see samples, page 87-1).

3. Cash bid bonds may be returned to the contractor.

Once another form of performance bond has been supplied, a remitted bid bond may be returned to the contractor. The forester must request this from the Bureau of Finance, Madison, using Timber Sale Close-out Transaction, Form 2460-4 (see samples, page 87-1). This type of transaction is the least desirable and should be discouraged because of potential time delays in processing the refund.

Performance Bonds

A minimum of \$750 or 10 percent of the total bid value of any timber sale, whichever is greater, shall be required as a performance bond before a contract is issued. A higher percentage may be recommended at the discretion of the property manager. The bond will be held intact until the sale is complete according to contract and all stumpage paid. The bond required may be rounded to the nearest \$10. If an assurance bond, irrevocable letter of credit, assignment of

savings account, or certificate of deposit is used as a performance bond, a copy of the performance bond documentation must be submitted to the Forest Tax Section for filing. Timber Sale Transaction/Remittance, Form 2460-3, should be used.

### Types of Acceptable Bonds

#### 1. Cash Bond

Collection and remittance of cash bond should follow the instructions on page 81-2 and Manual Code 9341.1.

#### 2. Personal Check Bond

Follow the instructions on page 81-2 and Manual Code 9341.1. This is the least desirable form of bond. Personal checks submitted as a bid or performance bond shall clear the bank prior to signing the contract. Personal checks used as a bid bond should NOT be held until another form of bond is submitted prior to contract signing. They should be deposited by normal remittance procedures.

#### 3. Certified Check/Cashier Check/Bank Money Order Bond

Follow the instructions on page 81-2 and Manual Code 9341.1.

#### 4. Irrevocable Letter of Credit

An irrevocable letter of credit (see page 64-4) may be used as a bid bond or performance bond. It must be issued by a bank which is a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation. **The letter must be an original and NOT a copy.**

A letter of credit is similar to a cash deposit; the State of Wisconsin Department of Natural Resources may draw on the issuing bank up to the amount stated in the letter of credit. The property manager or superintendent is authorized to approve letters of credit. The letter of credit should be filed locally in the property manager's sale records.

Contents of an irrevocable letter of credit must include the following:

- a. Letter-of-Credit number.
- b. A clear statement that it is irrevocable.
- c. Name of the bank's customer; that is the principal.
- d. Amount of credit extended (maximum limit). This limit must equal or exceed the penal sum or penalty for which the letter of credit is pledged to secure.
- e. An authorization to draw sight drafts upon the bank in favor of the Wisconsin Department of Natural Resources.
- f. A clear statement that the letter-of-credit number appearing on a sight draft is sufficient identification for honoring it. The letter must specify only one identification number.
- g. Bid bond - Letters of credit issued as surety as a bid bond need only cover the period between submission of bid and the signing of a timber sale contract.
- h. Performance bond - An unqualified expiration date for presentation of drafts for payment which is equal to the term of the contract, plus a sufficient period of time to allow for possible extension(s) and for close-out of the contract after cutting is completed.

An amendment correcting a letter of credit, extending the credit limit and/or expiration date for presentation of a draft becomes a part of the original letter of credit.

A letter-of-credit is a contract between the Department and the issuing bank based on a third party agreement between the principal and the bank to which the Department is not a party. Some banks may not have a prescribed letter-of-credit form. In such instances, the bank may prepare a letter-of-credit on its letterhead.

Disposition of letters of credit will be as follows:

- a. A letter of credit which provides performance bonding shall be retained for the life of the contract, any extensions thereof, and during close-out of the contract after cutting is completed.
- b. A letter of credit will not be returned to an issuing bank if a draft has been drawn against it. It will be retained in the file. If a bank requests cancellation of such letter-of-credit, appropriate notice will be issued after collection of the draft amount. (See page 64-5.)
- c. A letter of credit against which no draft will be drawn requires a cancellation letter releasing the bank from obligation to the letter of credit. The original letter of credit and a copy of the release letter should be maintained in the sale closeout file. A letter of credit providing a bid bond will be returned directly to the issuing bank when the contract has been signed. (See page 64-5.)
- d. If a letter of credit covers more than one contract, the cancellation letter must clearly specify which contract or contracts the release applies to.

**SAMPLE**

LETTER OF CREDIT

(Printed letterhead)

(Name of issuing bank)

(City and State)

(Date)

Irrevocable letter-of credit  
number \_\_\_\_\_

Wisconsin Department of Natural Resources  
(Beneficiary)

(Local address)

Gentlemen:

(Name of issuing and paying bank) has established an irrevocable letter of credit in your favor, at the request of and for the account of (Name of Principal), to the extent of (Written amount) (\$ Numerical

Amount), <sup>1/</sup> to secure the (Bid or performance), <sup>2/</sup> on (tract or Contract) number \_\_\_\_\_.

Said funds are available by presentation of your sight draft(s) which: (a) clearly specify the number of this credit, (b) are drawn in favor of secured tract or contract number cited above.

Drafts drawn in conformity with the conditions of this credit will be honored by us if presented at our

bank on or before (Date)<sup>3/</sup>.

Very truly yours,

(Name of bank with byline for signature of person authorized to sign and his title.)

Corporate Seal

Or

Notary Statement)

\_\_\_\_\_

<sup>1/</sup> Must equal or exceed the amount which the letter of credit is pledged to secure.

<sup>2/</sup> Enter words appropriate to the bond.

<sup>3/</sup> Must exceed the term of the contract being bonded if a performance bond.

**SAMPLE**

CANCELLATION OF LETTER OF CREDIT

Department of Natural Resources

(Letterhead)

(Date and code)

(Name and location of issuing bank)

Gentlemen:

The Wisconsin Department of Natural Resources consents to cancellation of the following letter of credit effective to this date:

Number \_\_\_\_\_

Date of letter \_\_\_\_\_

Credit amount \_\_\_\_\_

For account of \_\_\_\_\_

Sincerely,

(Name and title of property manager or superintendent)

5. Assurance Bond

Assurance bond forms are provided by the bonding company. Bonds must be submitted prior to the contract signing.

6. Certificates of Deposit - Bond

Certificate of deposits must be made out jointly (between the Department and the bidder) and must be signed by the bidder prior to acceptance and the contract signing.

7. Assignment of Savings Account - Bond

An assignment of savings account may be used if it conforms with that indicated on the sample format on the following pages. Assignments of savings accounts are to be treated similarly to irrevocable letters of credit.

The financial institution involved must be a member of and insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation or the National Credit Union Administration.

Acceptances, Demands and Releases may be signed and acted upon by the property manager.

**SAMPLE: Assignment of Savings Account Agreement**

Assignment of Savings Account Agreement  
Wisconsin Department of Natural Resources

1. (Name of Principal) (Hereinafter referred to as the Assignor) has entered into an agreement with the Wisconsin Department of Natural Resources (hereinafter referred to as the Department). The terms of this agreement are stated in Timber Sale Contract, Property \_\_\_\_\_, Contract Number \_\_\_\_\_. In order to fulfill the Department requirements for a Performance Bond, the Assignor does hereby assign, transfer, and set over to the Department all right, title, and interest in the Assignor's savings account number \_\_\_\_\_ (hereinafter referred to as Assigned Account) deposited in the (Name of financial institution) located at (Address of financial institution) (hereinafter referred to as Bank), which is a member of the (Federal Deposit Insurance Corporation) in the amount of (only amount of bond) dollars (\$\_\_\_\_\_).
2. The Department may at any time after giving written notice to the Assignor, demand payment from the Bank holding the assigned savings account for an amount not to exceed (amount of bond) dollars (\$\_\_\_\_\_).
3. Any penalty suffered which results from a demand for payment by the Department from the Bank shall be assessed against the Assignor.
4. The Assignor is not entitled to any earnings or interest on the cash proceeds after the Department has withdrawn such proceeds from the Assigned Account.
5. The passbook to the Assigned Account shall be held by the (Name of financial institution) located at (Address of financial institution).
6. The Assignor authorizes and directs the Bank to pay all or any part of the Assigned Account as instructed by the Department until the Bank receives the Release as described in paragraph 8 of this agreement. The Bank shall not be liable to inquire whether there has been performance or payment or notice given the Assignor or to see the application of monies paid on the instruction of the Department. The Bank may rely upon the instructions of the Department executed over the signature of the person, or a designee, appearing under Acceptance without need to verify the person's authority.
7. The Bank and Assignor agree that in the event the Bank closes or goes into receivership, any insurance proceeds received by the Bank shall be applied to cover the assignment first.
8. This assignment remains in effect until the date the Department representative signs the Release outlined in paragraph 13 and forwards the Release to the Assignor for signature.
9. Signed and dated at (City and state where signed) this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Assignor's signature)

(Assignor's address)

**Corporate Acknowledgment**

10. I, (Name of corporate official), certify that I am the (Title of corporate official) of the (name of corporation), the corporation named as principal to this assignment, (Person who signed assignment) who signed this agreement on behalf of the principal was the (Title of person who signed agreement), that said agreement was duly signed in behalf of the corporation by authority of its governing body and is within the scope of its corporate powers.

(Corporate Seal)

(Signature and title of person signing corporate acknowledgment)

Acceptance

Timber Sale Handbook

11. The (Name of financial institution), as witnessed by the signature of a duly authorized officer, recognized the assignment of the Assigned Account in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Furthermore, the Bank agrees that this assignment has been established to protect the interests of the State of Wisconsin per the Timber Sale Contract, Property \_\_\_\_\_, Contract Number \_\_\_\_\_ and no right to offset the Assignor's debts against the Assigned Account will be recognized, nor will any attempt by the assignor to offset a claim against the State of Wisconsin or Department be recognized.

(Name of bank)

(Authorized signature)

(Address of bank)

Wisconsin Department of Natural Resources Acceptance

12. The Wisconsin Department of Natural Resources accepts the assignment of the Assigned Account in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Approved by: (Property manager)

Department's Release

13. The assignment of Assigned Account in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) is released. The authorized signature shall witness the termination of the Department's interest in this assignment.

(Property manager)

(Date)

Assignor's Release

14. I, (Principal), Assignor in this agreement recognize by my signature the release of the assignment as carried out in paragraph 13 to this agreement.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Assignor's signature)

Corporate Acknowledgment for Release

15. I, (Name of corporate official), certify that I am the (Title of corporate official) of the (Name of corporation), the corporation named as principal to the assignment; the (Person signing the assignment) who signed this agreement on behalf of the principal was the (Title of person who signed agreement) of the corporation; that the assignment was fully signed on behalf of the corporation by authority of its governing body and is within the scope of its corporate powers.

(Corporate Seal)

(Signature and title of person signing corporate acknowledgment for release)